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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 1134

FRANCIS J. DUGAN, PETITIONER

v.

PAUL HENRY NITZE, SECRETARY OF THE NAVY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

When in 1960 the Bureau of Ships announced a reorganization of the naval shipyards designed to reduce overhead costs by grouping shops within the production department of each shipyard (J.A. 181, 201, 321), petitioner was a Master Shipfitter at the Boston Naval Shipyard and the ranking civilian official in shops 11 and 26, reporting directly to the Production Officer (J.A. 3, 199). The reorganization created five major shop groups, each headed by a Group Master (a new position) (J.A. 181, 199). Shops 11 and 26 were brought together with shop 17 as the Structural Group, and the Master Sheetmetal Worker of shop 26 was selected to head the reorganized structural group as Group Master (J.A. 200,

214-520—66

201). Petitioner was informed that he was to continue as "head of Shops 11 and 26" but that he was to report directly and be responsible to the Group Master for all matters affecting the organization, facilities, and administration of the shipfitting and welding shops, as well as such additional matters as the Group Master might assign in connection with the over-all shop grouping plan (J.A. 200). As head of shops 11 and 26, petitioner continued to hold the rating of Master Shipfitter and to draw the same salary—$13,104 per annum—as he had before the reorganization (J.A. 182).

Petitioner complained to the Civil Service Commission that the Navy, in effecting the reorganization, had violated Section 14 of the Veterans Preference Act, 5 U.S.C. 863, by failing to give him (among other procedural benefits) 30-day written notice of, and a statement of reasons for, reducing his rank (J.A. 177–178). The Commission's Appeals Examiner held that the subordination of petitioner's position to a newly established supervisory position did not constitute a reduction in rank (J.A. 203–204), and hence the Act was inapplicable. The Board of Appeals and Review of the Civil Service Commission agreed that "the mere change in organization structure * * * did not reduce your rank as Master Shipfitter and ranking civilian supervisor in Shops 11 and 26" (J.A. 265–266), and, giving "careful consideration" to petitioner's contention that some of his former duties had been assigned to the Group Master, concluded:

> * * * So far as the record shows, your contention is valid only with respect to supervision of certain administrative and support services which were formerly maintained in each shop but which have since been consolidated for the shop group under supervision of the Group Master. In the opinion of the Board, supervision over such administrative and support services constituted a minor part of your duties and responsibilities and did not have any significant effect upon the rank of the position of Master Shipfitter. * * *.

Petitioner requested the Civil Service Commission to review his case (J.A. 270–318), but the Commission denied his request on the ground that he had "fail[ed] to demonstrate probable error in the previous decision of the Board of Appeals and Review" (J.A. 319). Petitioner then brought the present action in the United States District Court for the District of Columbia to set aside the reorganization and the Civil Service Commission's decision. The district court granted respondents' motion for summary judgment and dismissed the complaint (J.A. 198). Finding "no error affecting substantial rights," the court of appeals affirmed without opinion (Pet. App. 12). A timely petition for rehearing was denied on December 21, 1965 (Pet. App. 13).

This case presents no issue of general importance. In addition, the courts below were manifestly correct in ruling that petitioner's rights under Section 14 of the Veterans Preference Act were not denied. Concededly, the section is applicable only if petitioner's rank has been reduced. Since he retains the same title

and the same salary as before the reorganization—and the major portion of his former duties as well—clearly his rank has not been reduced.[1]

The petition for a writ of certiorari should be denied.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

APRIL 1966.

[1] Since the Commission found that there was no reduction in rank largely on the basis of the basic facts alleged by petitioner, there was no occasion for it to hold an evidentiary hearing.

U.S. GOVERNMENT PRINTING OFFICE: 1966

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